

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

v.

REPUBLIC STEEL
D/B/A REPUBLIC ENGINEERED
PRODUCTS, LLC
F/K/A REPUBLIC ENGINEERED
PRODUCTS, INC.

Defendant.

CIVIL ACTION NO.

COMPLAINT

Now comes Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”), by and through undersigned counsel and hereby files this Complaint against Republic Steel, d/b/a Republic Engineered Products, LLC, f/k/a Republic Engineered Products, Inc. (“Republic”) and avers as follows:

PARTIES

1. Norfolk Southern is a corporation incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Norfolk, Virginia.
2. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the United States Surface Transportation Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*
3. Republic is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Canton, Ohio.

JURISDICTION

4. Jurisdiction in this matter is based upon 28 U.S.C. § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

5. Jurisdiction is also based upon 28 U.S.C. § 1332 as the plaintiff and defendant are citizens of different states, and the amount in controversy exceeds jurisdictional requirements.

VENUE

6. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b) because Republic resides in this judicial district and a substantial part of the events or omissions giving rise to Norfolk Southern's cause of action occurred within this district.

PREDICATE FACTS

7. The subject matter of this action stems from freight charges assessed pursuant applicable tariffs, agreements and/or rate authorities governing the carriage of freight by Norfolk Southern, an interstate rail carrier, as mandated by 49 U.S.C. §11101.

8. The rules which set forth the Norfolk Southern's terms and conditions for transporting freight are set out in Norfolk Southern's Conditions of Carriage, its tariffs, and subsequent amendments of the same, which are public tariffs posted on the internet (collectively the "Tariff").

9. Rate authorities are agreements between Norfolk Southern and third-party customers seeking transportation services, like Republic, establishing specified rates under specified terms and conditions, including incorporation of the Tariff

10. Since at least February of 2018, Republic has placed shipments of its freight with Norfolk Southern for transportation via interstate rail pursuant to agreements and/or rate

authorities entered into between Norfolk Southern and Republic (the “Agreements”). The Agreements incorporate the Tariff by reference.

11. Pursuant to the Agreements, Republic is required to pay freight and related charges to Norfolk Southern for the interstate transportation of freight by rail in accordance with rates established by the Agreements.

12. Pursuant to the Agreements, Republic’s failure to timely pay the freight charges owed for shipments has also resulted in finance charges accruing at the rate of 12 percent per annum. The finance charges continue to accrue on delinquent invoices until paid in full.

13. Pursuant to the Agreement, Norfolk Southern is entitled to recover attorneys’ fees and costs incurred in seeking collection of any unpaid invoices.

14. Between February 2018 and November 2020, Norfolk Southern provided interstate rail transportation and related services at Republic’s request pursuant to the terms of the agreement for which Norfolk Southern has not been paid (the “Shipments”).

15. Norfolk Southern invoiced Republic for the charges which accrued for the Shipments and Republic received the invoices.

16. Republic failed to timely pay Norfolk Southern the invoiced amounts owed for the Shipments.

COUNT I
(Failure to Pay Rail Common Carrier Freight Charges)

17. Norfolk Southern incorporates all preceding paragraphs as if fully set forth at length herein.

18. The total principal amount of freight and related charges owed to Norfolk Southern by Republic for the Shipments is \$426,075.41.

19. Norfolk Southern submitted invoices to Republic for the charges that Republic incurred during the time period listed above.

20. The assessed freight charges were determined and made applicable pursuant to the Agreements including any and all incorporated terms.

21. Although demand has been made for payment of the outstanding charges owed to Norfolk Southern, Republic has failed and/or refused to pay those charges which remain due and owing to Norfolk Southern.

22. As a direct and proximate result of Republic's failure to pay the outstanding charges, Norfolk Southern has been damaged in the amount of \$426,075.41 plus interest, late fees, finance charges, attorney's fees and costs.

COUNT II
Breach of Contract (in the alternative)

23. Norfolk Southern incorporates all preceding paragraphs as if fully set forth at length herein.

24. Republic entered into valid and existing agreements with Norfolk Southern for transportation services via interstate rail.

25. Pursuant to the parties' agreements, Republic requested and utilized Norfolk Southern's services for the transportation of freight by rail.

26. Norfolk Southern provided the transportation services Republic requested and submitted invoices for those services to Republic pursuant to the parties' agreements.

27. Republic has failed and/or refused to pay these invoices.

28. Republic's failure to pay Norfolk Southern for the transportation services Norfolk Southern rendered is a breach of the parties' agreements.

29. As a direct and proximate result of Republic's breach, Norfolk Southern has been damaged in the amount of \$426,075.41 plus interest, late fees, finance charges, attorneys' fees and costs.

COUNT III
Unjust Enrichment (in the alternative)

30. Norfolk Southern incorporates all preceding paragraphs as if fully set forth at length herein.

31. At Republic's request, Norfolk Southern conferred a benefit to Republic when Norfolk Southern provided, and Republic accepted, transportation services via interstate rail.

32. The circumstances were such that Republic believed or reasonably should have believed that Norfolk Southern expected Republic to pay for the transportation services Norfolk Southern provided.

33. Norfolk Southern has suffered a loss of in the amount of \$426,075.41 as a direct and proximate result of Republic's failure to pay Norfolk Southern for the services Norfolk Southern rendered on behalf of Republic.

34. The circumstances are such that Republic's use of Norfolk Southern's transportation services without payment for the same make it inequitable for Republic to retain the benefit Norfolk Southern bestowed upon Republic.

35. Norfolk Southern is entitled to damages in the amount of \$426,075.41, which represents the reasonable and fair value of the transportation services Republic received from Norfolk Southern.

WHEREFORE, Norfolk Southern Transportation, Inc. respectfully demands that judgment be entered in its favor and against defendant, Republic, in the amount of \$426,075.41, in addition to prejudgment interest, late fees, finance charges, which accrue up until the time of

trial, together with costs, attorney's fees, and such other relief as the Court may deem just and proper.

/s/ Marshal M. Pitchford

Marshal M. Pitchford (0071202)

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